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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 18, 2001

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comments of Excel Communications, Inc.
In the Matter of CompTel's Petition for Rulemaking
RM-10131

Dear Ms. Salas:

Enclosed please find an original and four copies of the Comments of Excel Communications, Inc. in the above-referenced proceeding.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. Please direct all questions regarding this filing to Robert Aamoth at (202) 955-9676 or Heather Wilson at (202) 887-1240.

Respectfully submitted,



Robert J. Aamoth, Esq.
Heather M. Wilson, Esq.

Counsel for Excel Communications, Inc.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition for Rulemaking Regarding
Presubscribed Interexchange Carrier Charges

RM-10131

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JUN 18 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

COMMENTS OF EXCEL COMMUNICATIONS

Excel Communications, Inc. ("Excel"), on behalf of its operating subsidiaries, and by its attorneys, hereby respectfully submit joint comments in support of the Competitive Telecommunications Association's ("CompTel") Petition for Rulemaking¹ regarding presubscribed interexchange carrier ("PIC") change charges. Excel joins CompTel in urging the Commission to initiate a rulemaking in order to revise its current policies regarding PIC change charges to end-users levied by incumbent local exchange carriers ("ILECs")² in order to eliminate or reduce the existing safe harbor charge of \$5.00 and to ensure that PIC charges are based on the actual cost of switching consumers to the carrier of their choice.

¹ *In the Matter of Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges*, Petition for Rulemaking, RM-10131, filed May 16, 2001 ("*CompTel Petition*").

² Although CompTel has petitioned for a revision to PIC change rules as they apply to large and mid-sized price cap ILECs, Excel believes that these rules should apply to all ILECs. Additionally, Excel encourages the Commission to keep jurisdiction open in this proceeding in case it is necessary to address this issue for other carriers.

The current policies, including the \$5.00 safe harbor charge, adopted by the Commission in 1984³ and 1987,⁴ do not take into account increased savings from automated switching processes or reflect the current costs to ILECs for switching subscribers to other PICs. Furthermore, the policies adopted two decades ago are not consistent with the pro-competitive, pro-consumer policies of the 1996 Telecommunications Act (“the Act”).⁵ As a result, the current rules impose a significant financial burden on consumers⁶ while providing a windfall for ILECs who are able to charge subscribers a fee that is at least three or four times greater than their actual costs. Given the clear evidence that current PIC change charges exceed costs to the ILECs, Excel believes CompTel’s Petition is both reasonable and timely. Accordingly, Excel urges the Commission to promptly adopt a Notice of Proposed Rulemaking in order to remove this current deterrent to competition and relieve this unnecessary cost to consumers as quickly as possible.

Excel is the one of the largest long distance carriers in the United States, providing service to approximately three million subscribers. Excel serves primarily residential and small business long-distance customers widely dispersed throughout the country. As such, Excel has a direct interest in this proceeding.

³ *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 55 Rad. Reg. 2d (P&F) 1422 (rel. Apr. 27, 1984) (“1984 Access Charge Order”).

⁴ *Annual 1985 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd. 1416, (rel. Mar. 9, 1987) (“1987 Access Tariff Order”).

⁵ *The Telecommunications Act of 1996*, Public Law 104-104, 110 Stat. 56.

⁶ This cost is not insubstantial. On average, Excel’s customers pay more than \$600,000 a year in PIC change charges. Regardless of whether subscribers pay the PIC change charge directly or indirectly through higher per-minute rates, the consumer is ultimately shouldering the financial burden while the ILECs are making an unjustified profit.

I. The Commission's Rules Bear No Relationship to Actual Costs Associated with PIC Changes, and Therefore, Allow ILECs to Charge Fees That are Significantly Higher Than Necessary.

As the Commission noted last year in its *MCI Order*,⁷ the current rules regulating PIC change charges were originally adopted in 1984.⁸ At that time, the Commission did not determine or verify the carriers' costs with regard to establishing an overall rate schedule,⁹ nor did it believe a \$5.00 PIC change charge would create a "barrier to competitive entry or exercise of customer choice."¹⁰ Furthermore, when considering the matter again in the *1987 Access Charge Order*, the Commission found that developing cost support data for the PIC change charge "presents a difficult challenge to the carriers."¹¹ Since then, significant changes have been made in the way that PIC change requests are processed, and the ability of ILECs to collect and manage detailed cost-related data. Despite these considerable changes, most ILECs have not lowered their PIC change charges for more than fifteen years because these charges now represent a substantial profit center for these ILECs.¹²

In the *MCI Order*, the Commission agreed that MCI presented clear and uncontroverted evidence that automated processes, which are used for the majority of PIC change requests, reduce the time, labor and cost of processing these changes.¹³ Additionally,

⁷ *MCI Telecommunications Corp. v. US West Communications, Inc. et al.*, Memorandum Opinion and Order, 15 FCC Rcd. 9328, rel. May 18, 2000 ("*MCI Order*").

⁸ *Id.* at ¶¶ 11-12.

⁹ *Id.* at ¶ 10.

¹⁰ *Id.* at ¶ 13.

¹¹ *Id.*

¹² CompTel estimates that these profits can be measured in hundreds of millions of dollars on an annual basis. *CompTel Petition* at 1.

¹³ *MCI Order* at ¶¶ 8-9.

MCI noted that at least two ILECs, BellSouth Corp. and Southern New England Telephone Company, have reduced their PIC change charges as a result of these efficient automated procedures.¹⁴ Therefore, Excel supports CompTel's proposal that the current PIC change charge safe harbor be eliminated or reduced from its current \$5.00 to \$1.49, which is the fee that BellSouth has been charging for more than ten years.

II. The Commission's Rules Allowing for Higher PIC Change Charges are Inconsistent with the Current Status of the Industry, and the Pro-Competition Policies of the 1996 Telecommunications Act.

The Commission's rules no longer fit within the competitive framework of Congressionally-mandated telecommunications policy. Indeed, these rules significantly undermine that policy. In the *1984 Access Order*, the Commission noted that, "to the extent that a presubscription charge is intended to discourage excessive amounts of shifting back and forth between or among interexchange carriers, we do not believe a charge geared to this purpose would be unreasonable."¹⁵ To the extent that the Commission's rules discourage consumers from freely choosing among competing carriers by allowing an excessive PIC change charge, they are flatly inconsistent with the pro-competition policies of the 1996 Telecommunications Act. Therefore, the Commission's rules regarding PIC change charges must be revised to eliminate or, at the very least, reduce these onerous fees.

Even more importantly, the Commission's rules ignore the realities of the current marketplace, where ILECs may now offer in-region long distance services in areas where the local telecommunications market is open to competition. This development gives ILECs a huge competitive advantage over all other providers of long-distance service. As CompTel correctly

¹⁴ *Id.* at ¶ 7.

¹⁵ *MCI Order* at ¶ 11, citing the *1984 Access Order* at Appendix B, 13-5.

noted in its Petition for Rulemaking, ILECs are able to provided an unfair competitive advantage to their long distance affiliates because, while the unaffiliated interexchange carrier has to pay the above-cost PIC change charge, the ILEC long distance affiliate will face only the (much lower) economic cost of changing the PIC; and meanwhile, the ILEC parent reaps the inflated PIC change rates from its affiliate's competitors.¹⁶ Indeed, the Commission specifically noted in the *MCI Order* that “[i]t may well be that the policies reflected in the *1984 Access Charge Order* and the *1987 Access Charge Order* are no longer appropriate in light of changes in the industry since that time.”¹⁷

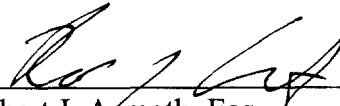
¹⁶ *CompTel Petition* at pg. 5. For example, Verizon advertises to its customers that it will cover all switching charges when they change their long distance service to Verizon (thereby paying themselves the switching fee). See www.verizonld.com/home/index.htm?NPA=&NXX=&State=NY&Segment=Residential&VIPCode=VZB0000183 (visited June 11, 2001).

¹⁷ *MCI Order* at ¶ 14.

Conclusion

Excel joins CompTel in respectfully requesting the Commission to initiate a rulemaking to assess the Commission's rules regarding PIC change charges. For the reasons stated herein, Excel urges the Commission to eliminate or reduce the current safe harbor charge and revise its policies to reflect the current status of the market and to eliminate any inconsistencies within the Commission's overall policy of fair and robust competition.

Respectfully submitted,



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June 18, 2001

CERTIFICATE OF SERVICE

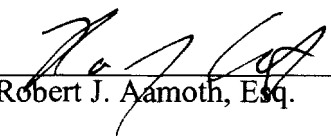
I, Robert J. Aamoth, counsel for Excel Communications, Inc., hereby certify that a true and correct copy of the foregoing Comments of Excel Communications, Inc. was sent this 18th day of June, 2001, by first class mail, postage prepaid to the following:

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